

Exploring Truth-In Labeling Meat Laws



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Objective

This report provides information and analysis on the issue of truth in labeling meat laws. In addition, this report explores legislation on truth in labeling meat that have surfaced across the country, and highlights the components of the laws, which include definitions of meat, label regulation structure, and enforcement. Furthermore, this report examines the lawsuits that have emerged as a result of truth in labeling meat laws and highlights court opinions, and arguments, raised by defendants and plaintiffs.

Introduction

As issues of global warming and environmental sustainability dominate the public policy dialogue, alternative proteins have emerged as an innovative biotechnology promising to make the planet greener. Lab grown meat, also known as cell-cultured meat or cultivated cells, and plant-based proteins are two meat alternatives gaining popularity among consumers seeking to make ethically conscious choices about their food and their environment. Plant-based proteins are sourced from plants such as soybeans, peas, and nuts. Cultivated cells, on the other hand, are derived from animal cell tissue that is placed inside a bioreactor.

Cultivated cells, along with plant-based protein meat, aim to replicate the taste and texture of farm-grown meat. As cultivated cell meat and plant-based protein meat progress toward replicating conventional meat, differentiating between alternative-meats from conventional meat becomes difficult. This has created a rift amongst meat farmers and biotech companies, as both cater to the same audience - meat consumers. Biotech companies would also add that they cater to a diverse audience of consumers who seek to make healthier and more environmentally friendly food choices. As a result of the shared interest to cater to meat consumers, cultivated cell companies and plant-based companies are labeling their products with traditionally identifiable meat terms, such as “hot dog” and “burger” and “meatballs.” In addition, some companies include in the labeling of their food product how the product was sourced, and others opt to not include how the meat was sourced. This has sparked national debate regarding how plant-based and cultivated cell meats should be labeled to distinguish these products from traditionally sourced meats.

Currently, 153 companies worldwide are involved in the production of cell-cultivated meat, 43 of which are based in the United States. Singapore was the first country to approve the sale of cell-cultivated meat, with the US as the second country to allow for the sale of cell-cultivated meat. From 2016 to 2022, the global scale of cell-cultivated meat has reached nearly \$3 billion in investment. With these investments, companies like [Upside Foods](#), a food technology company based in California, has been able to expand its production of meat from 50,000 pounds of meat to 400,000 pounds annually.

Potential Impacts of Lab-Grown Meat on the Conventional Meat Industry

The cell-cultivated industry is still in the early stages of production, therefore, estimates on the impact of the biotechnology industry on the conventional meat industry are not yet founded. However, a growing concern among conventional meat farmers is the potential of the lab-grown meat industry to disrupt the sales and production of conventional meat. Currently, the conventional meat industry outnumbers the lab-grown meat industry both in sales and production. In 2013, the first lab-produced burger costed [\\$325,000 to produce](#). Since then, the production costs have been cut by 99% making lab-produced meat average

\$17 per pound at the factory level. Lab-produced meat at the grocery store will cost [\\$40 a pound](#), whereas, a pound of conventional meat costs only \$5. According to estimates, if the costs for lab-grown meat follow the same trajectory, cell-cultivated meat can achieve parity with conventional meat by 2030. This figure, however, assumes consumer acceptance of cultured meat. According to a June 2023 survey, [50%](#) of respondents were “not very” or “not at all” interested in eating cell-cultivated meat. Lab-grown meat is also being pushed by many environmental advocates who highlight the potential for lab-grown meat to clean up the climate and reduce greenhouse gas emissions. Greenhouse-gas emissions from conventional meat farms (mostly cows) account for [15%](#) of the global total, but whether cultivated meat is more environmentally friendly is not entirely clear due to the limited data available on the issue.

Delaware Poultry and Meat Industry

Delaware is home to [2,300 farms](#), producing 4.4 billion pounds of chicken and generating \$5 billion in wholesale value. In 2020, [Delaware’s poultry industry](#) was responsible for as much as \$7.23 billion in total economic activity. According to the [US Department of Agriculture](#), annual broiler production accounted for over 75% of Delaware’s value of agricultural production. Due to the significant economic activity of the poultry industry in Delaware, the issue of cell-cultured and plant-based industry is particularly relevant to the State. The emergence of the plant-based and cell cultured industry poses relevant questions regarding the economic implications the industry would have on Delaware’s poultry industry.

Background

According to a [report](#) by Boston Consulting Group (BCG) and Blue Horizon Corporation (BHC), the global market for alternative meat, eggs, dairy, and seafood products is set to reach at least \$290 billion by 2035. The growth of the alternative meat, eggs, dairy, and seafood industry is expected to continue to grow as the US Department of Agriculture (USDA) granted the approval for sale of cell-cultured/lab-grown meat produced by two companies, GOOD Meat and Upside Foods on June 21, 2023. The approval from the USDA comes less than a year after the [US Food and Drug Administration](#) (FDA) declared that the companies’ products are safe for human consumption.

Currently, the two companies have only been given approval to sell strictly chicken products and only to a handful of restaurants. To sell beef, pork, and fish, they will have to go through another approval process.

As the industry continues to grow, there are various economic and commercialization hurdles along the way: lowering costs while scaling up production, sourcing cheap ingredients to feed cells, and increasing the efficiency of cell growth. More importantly, the industry has been battling state legislative action in courts over truth in labeling meat laws. These laws often ban or require disclosure of terms such as “meat” or any meat related term as a label for lab-grown or plant-based meat products. The intent behind truth in labeling laws is to protect consumers from being misled or confused by the labels currently being used by alternative meat companies. However, cell-cultured and plant-based companies see that these laws are an infringement on their First Amendment right to commercial speech and an attempt by legislators to put alternative meat companies at an economic disadvantage to serve the interests of their traditional meat constituency. As a result of these differences, various litigation cases have surfaced across the country, with the majority originating in the south and Midwest region.

Amendment, and the Dormant Commerce Clause. In addition, critics argue that the legislation undermines the free market, giving traditional meat industries more competitive advantage over others. Furthermore, opponents of the legislation claim that banning conventional meat labels would further confuse consumers and that there is no evidence to indicate that consumers are being confused by the current plant-based or cell-cultured meat labels.

Truth in Labeling Meat Laws

Meat labeling laws, or truth in labeling meats laws, function to ban meat labels relating to cell-cultured or lab grown meats. Within the same law, some states also ban labels relating to meat on plant-based products. The core of these statutes lies in the regulation and prohibition of labeling on cell-cultured products. Those provisions are the most often contested and litigated issue of these statutes. In addition, the enforcement provision within the statute plays a crucial role in ensuring its adherence and has been a point of contention in litigation.

Regulation / Prohibitions Structure

A common feature of the labeling meat laws is the provision of diverse definitions of terms such as meats, beef, label, and pork. However, some statutes contain language broad enough to impact plant-based meat alternatives. Generally, these definitions are meant to distinguish how meat has been traditionally sourced from how biotechnology is now enabling other means of deriving meat, whether cell-cultured or planet-based. Based on current statutes in effect, the regulation framework of these statutes can be divided into two categories.

The first category establishes what can be termed as a meat labeling prohibition. In certain statutes within this category, the use of the term “meat” or any “historically,” “identifiable,” or related term to “meat” as a label for cell-cultured products is completely prohibited. The second category establishes a meat labeling disclosure requirement. Within these statutes, cell-cultured products or plant-based products are allowed to use the label term “meat,” but with the condition that a qualifier term such as -- veggie, cell-cultured, lab-grown meat, meatless, made from plants -- be prominent and in close proximity to the name of the product.

The significant difference between the two categories can either lead the meat labeling law to be constitutional or unconstitutional. Statutes falling under the meat labeling prohibition category have been the subject of numerous lawsuits. These lawsuits claim that the statutes are infringing on cell-cultured or plant-based companies’ First Amendment right to commercial speech. Arkansas is one of the states which enacted a statute prohibiting the use of the term meat and any identifiable meat term. As of 2023, it is the sole state where the courts have ruled the statute unconstitutional. Similarly, Louisiana’s statute was also initially deemed unconstitutional only to be reinstated by the U.S. 5th Circuit Court of Appeals. The court’s decision was based on the statute’s application to companies that “intentionally” attempt to deceive consumers.

States with statutes that fall under the second category are often more accepted by the courts, but not entirely. For example, in Mississippi, in a lawsuit with Upton’s Naturals, a plant-based company, the plant-based company ultimately withdrew the lawsuit after reaching a settlement with the State of

Mississippi, allowing the use of qualifier terms. In Oklahoma, a lawsuit was filed by the same plaintiff, Upton's Naturals, in which the plaintiff's request for a preliminary injunction was denied by the US District Court for the Western District of Oklahoma and is currently pending with the Plaintiffs filing a motion summary judgement.

Litigation

Turtle Island Foods, S.P.C v. Thompson, (2022)

Status: Case Pending. Missouri was the first state to enact truth in labeling meat laws for meats in the country, it was also the first state to face challenges. In a lawsuit brought by Turtle Island Foods, or Tofurky, which produces meatless products, the Western District Court of Missouri denied Turtle Island Foods' preliminary injunction and allowed for the suit to move to a full trial. The court applied the Central Hudson test³ and reasoned that the plaintiffs were unlikely to succeed on the merits because commercial speech receives less protection than other forms of protected speech. In addition, the court contended that Turtle Island Foods faces no credible threat of enforcement or "irreparable harm," and that the plaintiffs are bringing an "unfounded prosecution...insufficient to confer standing." This is due in part to the issuance of guidelines by the Missouri Department of Agriculture that outlined a list of statements that food companies can use as their label to avoid being reported, which Tofurky used to implement their labels on their food products. The plaintiffs appealed the decision to the US 8th Circuit Court, in which the Circuit Court affirmed the district court's decision to deny a preliminary injunction. Currently, the U.S. District Court for the Western District of Missouri is considering plaintiffs motion to compel discovery from the State of Missouri, plaintiffs Leave to File Expert Report out of Time, and the Missouri Cattlemen's Association's Motion to Quash Subpoena.

Turtle Island Foods SPC v. Soman, (2023)

Status: Case Closed; Unconstitutional. On July 22, 2019, Tofurky and the Good Food Institute again filed a lawsuit in the US District Court for the Eastern District of Arkansas, Central Division. The court sided with the plaintiff and held Arkansas' statute as unconstitutional. The court reasoned that Turtle Island Foods clearly labeled their products as plant based. Moreover, the court contended that Turtle Island Foods was not intending on deceiving consumers by using identifiable meat terms such as "burger" or "hot dog." In fact, the court argued that Turtle Island Foods dispelled consumer confusion through its labels indicating that its products contain no animal-based meat. Furthermore, the court noted that the state failed to provide any evidence that demonstrates consumers' confusion regarding Turtle Island Foods' products. Throughout the case, Turtle Island Foods argued that the penalties of violating the law, a \$1,000 fine is financially prohibitive. The court concurred with this assessment, and determined that,

³ The Central Hudson test is a four-prong test that determines whether governmental regulation of commercial speech is constitutional. The first prong states that the speech must concern lawful activity and not be misleading. The second, the governmental interest in regulating the speech must be substantial. Third, the regulation in question must directly advance governmental interest. Fourth, the regulation must not be more extensive than is necessary to serve the interest expressed.

“Tofurky likely faces ruinous civil liability, enormous operational costs, or a cessation of in-state operations.”

Upton’s Naturals v. Bryant, (2019)

Status: Case Closed. In a lawsuit brought by Upton’s Naturals, a meat alternative and vegan producer, the plaintiffs dropped the lawsuit four months later and filed a [stipulation of dismissal](#) withdrawing their claims. This was due to an agreement with the State of [Mississippi](#) to allow the use of qualifier terms for plant-based foods.

Turtle Island Foods, S.P.C. v. Strain, (2023)

Status: Case Closed. Louisiana faced litigation from plaintiff, Tofurky, in which the district court held Louisiana law unconstitutional. The State of Louisiana appealed the decision, in which the U.S. 5th Circuit Court reversed the decision, and reinstated Louisiana law. The Court held that the law only applies to companies that “intentionally” try to deceive consumers. The Court’s ruling specified that the statute exclusively pertains to companies that are overtly deceiving consumers. The plaintiffs were in favor of the Court’s ruling, stating that the ruling removes ambiguity or legal security for plant-based companies.

Plant Based Foods Ass’n v. Stitt, (2022)

Status: Court Scheduled Bench Trial. In Oklahoma, Upton’s Naturals filed a lawsuit against Oklahoma’s plant-based labeling laws and requested a preliminary injunction. The U.S. District Court for the Western District of Oklahoma denied the request. Upton’s Naturals argued that the law infringed on the company’s right to free speech. The court however argued that the labels Upton’s Naturals used on its products were “misleading to the reasonable consumer,” those labels include, “Cheesy Bacon Mac” or “100% vegan.” Upton’s Naturals also claimed that Oklahoma’s disclosure requirement is unreasonably burdensome. However, the court applied the Zauderer test⁴ and concluded that the disclosure requirement was justified as it “ensures that a reasonable consumer will not be misled by the product name.” Upton’s Naturals subsequently appealed the decision to the U.S. 10th Circuit Court of Appeals, seeking to overturn the U.S. District Court’s order, which denied their motion for a preliminary injunction. However, after their appeal to the U.S. 10th Circuit Court of Appeals, the U.S. District Court issued an order staying the proceeding, which led to appellees submitting a notice of dismissal regarding their appeal of the U.S. District Court’s order. On June 6, 2020, the U.S. District Court issued an order to reopen the case. On October 5, 2023, the U.S. District Court rescheduled the bench trial to May 14, 2024, with trial briefs to be submitted on the day of the bench trial.

⁴ The Zauderer test is a four-prong test in which the Supreme Court held that commercial disclosure requirements are constitutional if they are (1) factual (2) non-controversial (3) reasonably related to the state’s interest in preventing deception of consumers (4) whether the disclosure requirement is unjustified or unduly burdensome.

Analysis of Issues Litigated

First Amendment Commercial Speech

In the lawsuits brought against the various meat labeling statutes, plaintiffs have challenged the statutes on First Amendment grounds. The plaintiffs argued that the laws banning the use of the term “meat” on their food products is an infringement of First Amendment Commercial Speech and the plaintiffs contend that such restrictions put them at an economic disadvantage compared to traditional meat producers. The courts thus far have varied in their response to these First Amendment challenges. Some courts have agreed with the plaintiffs, asserting that the statutes restrictions on the use of terms like “meat” by plant-based and cell-cultured companies are an infringement on First Amendment commercial speech. However, courts have also reasoned otherwise in cases where the statute imposes a disclosure requirement alongside restrictions. In these instances, the courts reasoned that the speech at issue is more akin to a requirement of disclosure than restriction of speech.

In the Arkansas lawsuit, the court analyzed various product labels from the plaintiff’s food products, in which the plaintiffs used terms such as “ham roast,” “sausage” and “hot dog.” The court found that the food products using “meaty” labels also used qualifier terms that were prominently disclosed preventing the average consumer from being misled or confused. The Eastern District Court of Arkansas also reasoned that the State could require more prominent disclosures to advance the States’ interest rather than ban the use of “meat” terms⁵. Similarly, in the Louisiana case, the court concurred with the State’s argument that the plaintiffs labeling was not misleading because the labels also used qualifier terms to not mislead consumers. In the Oklahoma case, the court found that a label, “cheesy bacon mac,” as “potentially misleading” suggesting that the inclusion of a qualifier term would have dispelled consumer confusion. The plaintiffs in this case argued that the disclosure requirement by the law was burdensome, but the court countered that stating that the disclosure requirement is not “unreasonably burdensome.”

Threat of Enforcement

Another issue that plaintiffs used to challenge meat labeling statutes is through challenging the implications of the enforcement mechanisms in the statutes on their companies. In Arkansas, the plaintiffs argued the \$1,000 fine for violations of the act posed a financial harm to the companies’ operations. The court agreed and stated the plaintiff will suffer irreparable harm. Thus, the court granted the plaintiffs a preliminary injunction. In Missouri, however, the plaintiffs made the same claim, however, the Missouri Act does not impose a fine on a company in violation of the act. The court reasoned in that case, that the plaintiffs do not face a threat of enforcement.

Extensiveness of the Law

The fourth prong of the Central Hudson test requires that the law be scrutinized on “whether it is not more extensive than is necessary to serve [governmental] interest.” The plaintiffs argued that the laws were more extensive than necessary to serve a governmental interest. For example, in the Louisiana lawsuit, the plaintiff argued that the law could have used less restrictive means by requiring “more prominent

⁵ “...the State could require more prominent disclosures of the vegan nature of plant-based products, create a symbol to go on the labeling and packaging of plant-based products indicating their vegan composition” Kristine G. Baker U.S. District Judge

disclosures of the vegan nature of plant-based products...” In Arkansas, the court reasoned that the law was more extensive than necessary to serve the state’s interest, arguing that the Arkansas law would invalidate non-misleading labels, rather than just misleading labels.

Conclusion

Lab-grown meat and plant-based meat pose relevant questions for Delaware’s poultry industry. Whether Delaware’s poultry industry would become impacted as a result of lab-grown meat and plant-based meat coming to Delaware’s meat market is uncertain. This uncertainty stems from the disparity in production levels between alternative meat production and conventional meat production. In addition, consumer acceptance or preferences favoring alternative meats over conventional meat, which is influenced by factors such as price, health concerns, and societal perceptions, play a critical role in determining the trajectory of the alternative meat market.

Delaware lawmakers need to further explore meat labeling laws as the industry of alternative-meats is consistently evolving. In addition, if the State of Delaware considers implementation of truth-in labeling meat laws, Delaware lawmakers should await the decisions of pending litigation currently taking place in Texas, Oklahoma, and Missouri. This will aid in mitigating the risk of the law being challenged by providing lawmakers valuable insight on how the courts have opined on these laws.

Overall, in the litigation cases that have ended relating to truth-in labeling meat laws, Arkansas is the only state where the courts has struck down the meat labeling law as unconstitutional (with the exception of Louisiana which the U.S. 5th Circuit Court reversed). The courts have demonstrated more leniency towards truth-in labeling laws that allow for alternative-meat companies to use meat related terms with a condition of requiring prominent disclosures of the origins of the alternative-meat product. In contrast, the courts have not been in favor of truth-in labeling laws that completely ban alternative-meat companies from utilizing meat related terms on the labeling of their meat-products. However, this analysis is subject to change considering that three litigation cases are still pending (Texas, Oklahoma, Missouri).

Appendix 1: States Meat Labeling Laws

State	Enacted	Features of the Law	Link
Alabama	May 23, 2019	A food product that contains cultured animal tissue produced from animal cell cultures outside of the organism from which it is derived may not be labeled as meat or a meat food product.	HB 518
Arkansas	March 18, 2019	<p>"Meat" means a portion of a livestock, poultry, or cervid carcass that is edible by humans. Meat does not include: (i) synthetic product derived from a plant, insect (ii) product grown in a laboratory from an animal cell.</p> <p>Prohibited Activities</p> <ol style="list-style-type: none"> (1) Affixing a label that is false or misleading. (2) Representing the agricultural product as food when the product is not derived from harvested livestock, poultry.... 	Act 501
Kansas	May 5, 2022	<p>"Meat analog" means any food that approximates the aesthetic qualities, primarily texture, flavor and appearance, or the chemical characteristics...but does not contain any meat, meat food product, poultry product.</p> <p>"Identifiable meat term" terms such as meat, beef, pork, poultry, chicken, turkey, lamb, goat, jerky, steak, hamburger, burger, ribs, roast, bacon, bratwurst, hot dog, ham,</p> <p>A food shall be deemed to be misbranded: (a) If its labeling is false or misleading in any particular. (b) If it is offered for sale under the name of another food. (c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word, "imitation," and, immediately thereafter, the name of the food imitated.</p>	SB 261
Kentucky	March 21, 2019	<p>A food shall be deemed to be misbranded:</p> <ol style="list-style-type: none"> (1) If its labeling is false or misleading (2) If it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations...unless its label bears in type uniform size and prominence, the word, imitation immediately thereafter... <p>(15) If it purports to be or is represented as meat or a meat product and it contains any cultured animal tissue produced from in vitro animal cell cultures outside of the organism from which it is derived.</p>	HB 311
Louisiana	June 11, 2019	"Cell cultured food product" means any cultured animal tissue produced from in vitro animal cell cultures outside of the organism from which it is derived.	Act 273

State	Enacted	Features of the Law	Link
		<p>"Meat" means a portion of a beef, pork, poultry, alligator, farm-raised deer, turtle, domestic rabbit, crawfish, or shrimp carcass that is edible by humans but does not include a: (a) Synthetic product derived from a plant, insect, or other source.</p> <p>(b) Cell cultured food product grown in a laboratory from animal cells.</p> <p>"Misbrand" means to intentionally identify or label a food product in a false or misleading way</p> <p>"Misrepresent" means to intentionally use any untrue, misleading, or deceptive oral or written statement</p>	
Mississippi	March 12, 2019	<p>A food product that contains cultured animal tissue produced from animal cell cultures outside of the organism from which it is derived shall not be labeled as meat or a meat food product. A plant-based or insect-based food product shall not be labeled as meat or a meat food product.</p>	SB 2922
Missouri	June 1, 2018	<p>"Meat", any edible portion of livestock or poultry carcass or part</p> <p>"Misrepresent" means the use of any untrue, misleading or deceptive oral or written statement, advertisement, label, display, picture, illustration or sample;</p> <p>No person advertising, offering for sale or selling all or part of a carcass or food plan shall engage in any misleading or deceptive practices... misrepresenting a product as meat that is not derived from harvested production livestock or poultry;</p>	SB 627
Montana	April 18, 2019	<p>"Cell-cultured edible product" means the concept of meat, including but not limited to muscle cells, fat cells, connective tissue, blood, and other components produced via cell culture, rather than from a whole slaughtered animal.</p> <p>A cell-cultured edible product derived from meat muscle cells, fat cells, connective tissue, blood, or other meat components must contain labeling indicating it is derived from those cells, tissues, blood, or components.</p>	HB 327
North Dakota	March 3, 2019	<p>"Meat" means the edible flesh of an animal born and harvested for the purpose of human consumption.</p> <p>A person may not advertise, offer for sale, sell, or misrepresent cell-cultured protein as a meat food product. A cell-cultured protein product:</p> <p>May not be packaged in the same, or deceptively similar, packaging as a meat food product; and</p> <p>Must be labeled as a cell-cultured protein food product.</p>	HB 1400

State	Enacted	Features of the Law	Link
		For purposes of this section, "deceptively similar" means packaging that could mislead a reasonable person to believe the product is a meat food product.	
Oklahoma	May 5, 2020	<p>"Meat" means any edible portion of livestock</p> <p>"Misrepresent" means the use of any untrue, misleading or deceptive oral or written statement, advertisement, label, display, picture, illustration or sample;</p> <p>misrepresenting a product as meat that is not derived from harvested production livestock; provided, product packaging for plant-based items shall not be considered in violation of the provisions of this paragraph so long as the packaging displays that the product is derived from plant-based sources in type that is uniform in size and prominence to the name of the product</p>	SB 392
South Carolina	May 5, 2019	<p>"Meat" means the edible part of the muscle of cattle, sheep, swine or goats</p> <p>any misleading or deceptive practices, labeling, or misrepresenting a product as "meat" or "clean meat" that is cell-cultured meat/protein, or is not derived from harvested production livestock, poultry, fish, or crustaceans.</p>	H 4245
South Dakota	March 29, 2019	<p>A food product shall be deemed to be misbranded if the product is labeled or branded in a false, deceptive, or misleading manner that intentionally misrepresents the product as a meat food product</p> <p>or the purposes of this section, an intentional violation occurs when the party committing the violation knew or should have known that the conduct was a violation of this section.</p>	SB 68
Texas	May 15, 2023	<p>"Cell-cultured product" means a food product derived by harvesting animal cells and artificially replicating those cells in a growth medium in a laboratory to produce tissue</p> <p>"Meat" has the meaning assigned by 9 C.F.R. Section 301.2. The term does not include an analogue product or a cell-cultured product</p> <p>A cell-cultured product must be labeled in prominent type equal to or greater in size than the surrounding type and in close proximity to the name of the product using one of the following: "cell-cultured"; "lab-grown"; or a similar qualifying term or disclaimer intended To clearly communicate to a consumer the contents of the product.</p>	SB 664
Wyoming	February 26, 2019	<p>No person shall: Include the term "meat" or any synonymous term for meat or a specific animal species in labeling, advertising or other sales promotion unless the product(b) Is derived from harvested livestock</p> <p>Cell cultured or plant based products...shall clearly label cell cultured products as "containing cell cultured product" and clearly label plant based products as "vegetarian", "veggie", "vegan", "plant based" or other similar term indicating that the product is plant based;</p>	SB 68